

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOHN NIEMIERA,

Plaintiff,

v.

BELL ATLANTIC, et al.,

Defendants.

02-5867 (WGB)

O R D E R

ORDER ADOPTING THE REPORT AND RECOMMENDATION AND THE
CLARIFICATION TO REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE

This matter having come before the Court on Plaintiff's Motion to Vacate the Order dated February 6, 2003 and on Defendants' Cross-Motion to Dismiss portions of Plaintiff's Amended Complaint; and

The Court having referred the motions to United States Magistrate Judge Madeline Cox Arleo on May 3, 2004 for Report and Recommendation; and

Magistrate Judge Arleo having filed a Report and Recommendation on December 8, 2004 ("December 8, 2004 R&R"); and

The parties having requested clarification of the December 8, 2004 R&R; and

Magistrate Judge Arleo having filed a Clarification to Report and Recommendation on April 7, 2005 ("April 7, 2005 Clarification"); and

The Court having reviewed the December 8, 2004 R&R, the April 7, 2005 Clarification, and other documents on file in this matter; and

The Court having received no objections from the parties; and

For good cause shown;

It is on this 27th day of April 2005 **ORDERED** that the December 8, 2004 R&R and the April 7, 2005 Clarification are hereby **ADOPTED** as the findings of fact and conclusions of law of this Court; and

IT IS FURTHER ORDERED that as set forth in the December 8, 2004 R&R and the April 7, 2005 Clarification, Plaintiff's Motion to vacate this Court's February 6, 2003 Order is denied and Defendants' Motion to Dismiss the Amended Complaint is granted in part and denied in part as follows:

- (1) Counts III (reasonable accommodation under the New Jersey Law Against Discrimination "NJLAD"), IV (interactive process under NJLAD), and VII (Conscientious Employee Protection Act) are dismissed with prejudice;
- (2) Plaintiff may proceed with Counts I (NJLAD), II (NJLAD), V (NJLAD), VI (intentional infliction of emotional distress), VIII (public policy), IX (intentional tort), and X (Americans with Disabilities Act).

s/ WILLIAM G. BASSLER

WILLIAM G. BASSLER, U.S.S.D.J.